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Via hand and ECF

October 7, 2014

Honorable Lewis A. Kaplan
United States District Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: United States v. Khalid Al Fawwaz
S7 98 Cr. 1023 (LAK)

Dear Judge Kaplan:

Counsel for Khalid Al Fawwaz request a 90-day continuance of the trial, presently scheduled to begin on November 3, 2014 and join in the request for a continuance to be submitted on behalf of co-defendant Anas Al Liby. Given the scope of this case, including but not limited to the voluminous amount of documents, recordings, and classified material, a good amount of which need translation from Arabic to English, we are not ready to commence trial in three weeks' time. The reasons for the present request for additional time follow:

- We are awaiting completion of translations from our Arabic translator. He has yet to complete translations of documents provided months ago and needs to translate a new batch of approximately 150 pages. We anticipate completion of all translations by mid-December. Once completed, counsel and Mr. Al Fawwaz require time to properly review and discuss the translations. We have gone through a number of Arabic-language translators whom we have found to be inadequate. To date, our current translator is the only one who has produced translations we have been able to use. We have been judicious in our requests for translation, seeking to obtain translations of only the most relevant documents, reviewing documents with our client to limit the number of translations required and otherwise relying, in part, on the government's translations of documents which continue to be provided to us. Many hundreds of documents have not been, nor will they be, translated. Even so, more time is required to complete the tasks.
- We need to review approximately 500 pages of classified materials provided to us on October 4th. It is unclear how long this will take for us to review this recent disclosure, whether it will be unclassified, and

whether it will be used at trial. If it remains classified, we need to determine whether to file a supplemental CIPA motion and time to draft the motion.

- We need to translate and review approximately 120 pages of materials provided on September 26th (although in possession of the government since May 2011), which the government has informed us will be used in its case in chief. Although it is anticipated that this evidence will have direct bearing on Mr. Al Liby, we need to assess its impact on Mr. Al Fawwaz in light of the conspiracy charges and may need to file motions *in limine* to protect Mr. Al Fawwaz's interests. Co-counsel Bernard Kleinman is in the process of having the documents translated from Arabic to English. The earliest we anticipate receiving copies of these translations is the week of October 20th and will need sufficient time to review them with Mr. Al Fawwaz.
- Forensic examination of two computers seized from Mr. Al Fawwaz's home has not been completed. Despite his own sophisticated software, our forensic expert has been unable to open various files due to their format. This will require services of another company provided this is permissible pursuant to the terms of the protective order. At least some of the images appear to have been produced in a law-enforcement-only format. We are in the process of making arrangements with government counsel to view the computer hard drive on law enforcement equipment at an FBI Computer Analysis Response Team ("CART"). In addition, we need to arrange for our expert and translator to be present for the examination at the CART facility. Thereafter, we will need time in advance of trial to review and evaluate the extracted contents in defense of Mr. Al Fawwaz in light of the government's allegations concerning his computers. It is unlikely that this process will be swiftly accomplished.
- Issues regarding evidence requested in Letters Rogatory numbers 1-3, which this Court deemed material and relevant, have not been finalized. There is a judicial review proceeding pending in United Kingdom. We are informed by our London counsel that there are substantial grounds for pursuing the review process, which is necessary in defense of Mr. Al Fawwaz.

Unlike previous trials of the related indictment (*United States v. Ghailani*; *United States v. Abu Ghaiyth*). prosecution of Messrs. Al Fawwaz and Al Liby involves multiple countries, spans almost two decades, and presents issues specific to these two defendants. There is no comparison between either the defendants previously convicted, or the prosecutions.

Previously, we have expressed our concern for ensuring a fair trial for Mr. Al Fawwaz on pre-9/11 charges being tried in a post-9/11 era before jurors who have been observers of the war on terror. Efforts that the Court will make to safeguard Mr. Al Fawwaz's constitutional right to a fair trial by a fair and impartial jury may be compromised by tragic events in this century and daily reports of ongoing violence in Syria, all situations beyond the Court's control. Ensuring that Mr. Al Fawwaz is represented at trial by counsel who have had sufficient time to effectively defend him in the face of these most serious charges that carry a life sentence can only be achieved by granting the requested continuance.

Based on the foregoing, and in the interest of justice and fairness, we request that the Court grant a 90-day continuance of the trial date.

Respectfully submitted:

Counsel for Khalid Al Fawwaz

Bobbi C. Sternheim

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David V. Kirby
Barbara E. O'Connor

cc: Counsel for All Parties
(via email and ECF)